

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

STATE OF TEXAS, §
§
Plaintiff, §
v. §
§ Case No. 2:23-CV-00024-AM
ALEJANDRO MAYORKAS, §
Secretary of Homeland Security, *et al.*, §
§
Defendants. §

**DEFENDANTS' CORRECTED UNOPPOSED MOTION FOR LEAVE TO FILE
DISPOSITIVE MOTION IN EXCESS OF TWENTY PAGES**

Defendants respectfully file this Corrected Motion for Leave to File Dispositive Motion in Excess of Twenty Pages, and in support state as follows:

Rule CV-7(e) of the Local Rules states that dispositive motions filed with the Court shall be limited to twenty (20) pages in length, unless otherwise authorized by the Court.

On or about May 23, 2023, Plaintiff filed its Complaint, which seeks vacatur and injunction of a regulation jointly promulgated by the Department of Homeland Security and the Department of Justice, which creates a carefully-calibrated presumption of asylum ineligibility for noncitizens who cross the southwest border into the United States after traveling through a third country, subject to certain exceptions and means of rebuttal. *See* Compl. (ECF No. 1) ¶¶ 23-25, 53 & Request for Relief; Circumvention of Lawful Pathways, 88 Fed. Reg. 31,314 (May 16, 2013) (the “Rule”); *see also* Circumvention of Lawful Pathways, 88 Fed. Reg. 11,704, 11,708 (Feb. 23, 2023) (notice of proposed rulemaking). After an initial extension, Defendants’ deadline to answer or otherwise respond to the Complaint was August 24, 2023. *See* Order (ECF No. 8). Defendants originally filed this motion, with attachments, on August 24, 2023 (ECF No.

16), but received a deficiency notice concerning the proposed order today, August 25, 2023 (ECF No. 17), and are submitting this corrected motion at their earliest opportunity.

Defendants have prepared a Motion to Dismiss for lack of subject-matter jurisdiction and failure to state a claim, asserting that the Court should dismiss the Complaint in its entirety because Plaintiff lacks Article III standing to challenge the Rule, Plaintiff is not within the zone of interests protected by the relevant immigration statute, any challenge to CBP One would challenge nonfinal and discretionary action, and the Complaint on its face fails to state a claim for relief. Defendants' Motion, attached hereto, is 29 pages long. The additional nine pages are necessary to set forth the complex history and background concerning the events leading up to enactment of the Rule and the statutes governing the immigration processing of noncitizens who are governed by the Rule, as well as to adequately present Defendants' arguments for dismissal. The requested page expansion is also warranted by the importance of the issues raised, which concern immigration and management of our nation's borders and ports of entry.

It is Defendants' belief that this case can properly be disposed of through this dispositive motion and valuable judicial resources may be saved if Defendants are permitted to file this Motion to Dismiss, which is in excess of twenty pages.

Defendants thus respectfully request that their motion be granted and that the attached Motion to Dismiss and accompanying Appendix be filed, or, if the motion is denied, that the Court extend the deadline for Defendants to answer or otherwise respond to the Complaint.

Undersigned counsel conferred with counsel for Plaintiff via email and telephone regarding this motion, who stated that Plaintiff does not oppose the relief requested.

Dated: August 25, 2023

Respectfully submitted,
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

WILLIAM C. PEACHEY
Director

EREZ REUVENI
Assistant Director

By: /s/ Katherine J. Shinners
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of August, 2023, I electronically filed the foregoing corrected motion with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel for Plaintiff.

/s/ *Katherine J. Shinners*
KATHERINE J. SHINNERS
Senior Litigation Counsel